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EXAMINER

COTTINGHAM, JOHN R

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/766,222

Applicant(s)

PULLIAM, BRYAN J.

Examiner

John R. Cottingham

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: .

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-34, 36-39, and 42-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 1, the term "ground segment" renders the claim indefinite because it is unclear whether the term only refers to the ground immediately underneath the fixtures or if it extend out to an area around the fixture. This term also appear in other claims which are also rejected for the same reason.
4. Claims 5 and 6, the term "said leg members" lacks antecedent basis for this limitation in the claim.
5. Claim 44 recites the limitation "said central vertical axis" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3679

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ott U.S. Patent 775,931. Ott shows all of the claimed subject matter of a portable fencing system in Figures 1-7. The system comprises a winch corner fixture (post with winch 20) removably anchorable on a ground segment (area around the bottom of the post) for providing one end of a barricade or corridor arrangement along a side of an area adjacent to the ground segment; a corner post (opposite post) fixture removably anchorable on another ground segment (area around the bottom of the corner post) for providing an opposite end of the barricade or corridor arrangement along the side of the area adjacent to the ground segment; at least one spacer post (left most post) locatable between and spaced from the winch corner fixture and the corner post fixture and removably attachable on another ground segment (area around the bottom of the post) along the side of the area adjacent to the ground segments; and at least one length of fence wire storable on the winch corner fixture and extendable therefrom so as to extend between the fixtures and past the post, the winch corner fixture and corner post fixture having means 36a for securing the fence wire thereto, the spacer post having means 36a for engaging the fence wire.

3. Claims 1-3, 5, 8, 14-17, 18-19, and 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Kilmer U.S. Patent 5,469,690. Kilmer shows all of the claimed subject matter of a fencing system in Figures 1-4 and the specification. The system comprises a winch corner fixture 10 removably anchorable on a ground segment (area around the bottom of the post) for providing one end of a barricade or corridor arrangement along a side of an area adjacent to the ground segment; a corner post

Art Unit: 3679

(another post (not shown in the fencing system at the other end see Figure 4) fixture removably anchorable on another ground segment (area around the bottom of the corner post) for providing an opposite end of the barricade or corridor arrangement along the side of the area adjacent to the ground segment; at least one spacer post (any intermediate fixture between the corner post fixture and the winch fixture as seen in Figure 4) locatable between and spaced from the winch corner fixture and the corner post fixture and removably attachable on another ground segment (area around the bottom of the post) along the side of the area adjacent to the ground segments; and at least one length of fence wire 86 storable on the winch corner fixture 92 and extendable therefrom so as to extend between the fixtures and past the post, the winch corner fixture and corner post fixture having means 36a for securing the fence wire 86 thereto, the spacer post having means 36a for engaging the fence wire 86.

Regarding claim 2 the winch corner fixture includes a main support frame 14 having at least three mounting portions angular 82, and holes for 68 & 66 displaced from one another about a central vertical axis of the main support frame 14.

Regarding claim 3, a plurality of brackets 82 & 12 each attached on one of the mounting portions and the main support frame and adapted to have a portion of the fence wire secured about a selected one of the brackets.

Regarding claim 5, the winch corner has a plurality of at least three ground anchor stakes 68, 66, & 70 each attached to leg members 18 and 12.

Regarding claim 8, the winch corner fixture further includes a winch assembly 92 mounted upon the main support frame about the mounting portions thereof.

Art Unit: 3679

Regarding claim 14, the spacer post (as seen Figure 4) includes a post backbone 14, the wire engaging means (col. 5, lines 15-16) is at least one wire guiding device mounted on the post backbone 14, a ground anchor stake 66 mounted to an end of the post backbone 14 so as to be insertable into the ground segment for holding the post backbone in place on the ground.

Regarding claim 15, the spacer post further includes a step bracket 26 mounted to the post backbone 14 adjacent to the end thereof and having a spike attached to and extending downward from the step bracket such that the spike is insertable in the ground segment by stepping on the step bracket.

Regarding claim 16, a pair of mounting point devices 12 & 18 each adapted to support and thereby assist setting up of one of the winch corner fixture and the corner post fixture on a ground segment of a character lacking in strength normally required to accommodate the setting up of the fixture.

Regarding claim 17, a pair of mounting point device 12 each adapted to support and thereby assist setup of the spacer post on a ground segment of a character where penetration is not possible or permitted.

Regarding claim 18, a portable fencing system useful for forming an enclosure arrangement, the system comprising: a winch corner fixture 10 removably anchorable on a ground segment for providing one corner of an enclosure arrangement about an area adjacent to the ground segment; a plurality of corner post fixtures (figure 4, and col. 1, lines 14-30) removably anchorable on other ground segments for providing other corners of the enclosure arrangement about the area adjacent to the ground segments;

Art Unit: 3679

a plurality of spacer posts (figure 4, and col. 1, lines 14-30) spaced from one another and locatable between and spaced from the winch corner fixture 10 and the corner post fixtures and removably attachable on still other ground segments for providing side portions of the enclosure arrangement between the corners thereof and about the area adjacent to the ground segments; and at least one length of fence wire 86 storable on the winch corner fixture and extendable therefrom so as to extend between the fixtures and past the spacer posts, the winch corner fixture 10 and corner post fixture have means 92 and holes for securing the fence wire thereto, the spacer posts have means (holes) for engaging the fence wire.

Regarding claim 19, the winch corner fixture further includes a main support frame 12 having at least three mounting portions (holes) angularly displaced from one another about a central vertical axis of the main support frame.

Regarding claim 31, the spacer post (in Figure 4) includes a post backbone 14; at least one wire guiding device (holes) mounted on the post backbone; and a ground anchor stake 66 mounted to an end of the post backbone 14 so as to be insertable into the ground segment for securing the post backbone in place on the ground segment.

Regarding claim 32, the spacer post further including a step bracket 26 mounted to the post backbone 14 adjacent to the end thereof and having a spike 68 attached to and extending downward from the step bracket such that the spike is insertable in the ground segment by stepping on the step bracket.

Regarding claim 33, a pair of mounting point devices (holes in 26) each adapted to support and thereby assist setup of one of the winch corner fixture and the corner

post fixture on a ground segment of a character lacking in the strength normally required to accommodate the setup of the fixtures.

Regarding claim 34, a surface mounting device 26 adapted to support and thereby assist setup of the spacer post on a ground segment of a character where penetration is not possible or permitted.

4. Claims 41-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Kilmer U.S. Patent 5,139,235. Kilmer shows all of the claimed subject matter of a corner post fixture in Figures 1-5. The fixture comprises a post member 24; a pair of brace members 12; and a pair of support brackets 18 each separate from the other and independently adjustably mounted on the post member 24 between and opposite ends thereof, each of the brace members being pivotally mounted to one of the support brackets such that the brace members are angularly displaced from one another about the post member and each can be extended outwardly and downwardly at an acute angle relative to the post member 24.

Regarding claim 42, the corner post fixture further includes a pair of ground anchor stakes 28 each attached to an end of one of the brace members 12 and adapted to be inserted into a ground segment by stepping thereon (the tips).

Regarding claim 43, a plurality of mounting point devices (cup ends of 28) each adapted to support one of the ground anchor stakes and thereby assist setup of the corner post fixture on a ground segment of a character lacking in the strength normally required to accommodate the setting up of the fixture.



Art Unit: 3679

Regarding claim 44, each of the ground anchor stakes has a stake portion 34 extending inwardly toward the central vertical axis in a transverse relation from said one of said brace members 12 such that the stake portion is insertable into the ground by stepping on the ground anchor stake on an opposite side thereof from the stake portion.

Regarding claim 45, a step bracket anchor stake 16 attached to an end of the post member 24, the step bracket anchor stake has an angled step portion 34 and a stake portion 34 insertable into the ground by stepping on the angled step portion.

***Allowable Subject Matter***

5. Claims 4, 6-7, 9-13, 20-30, and 35-40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 4 including a plurality of at least three spaced apart leg members each pivotally mounted to one of the mounting portions in a tripod configuration; the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 6 including a stake portion extending inwardly toward the vertical axis in a transverse relation from the leg member; the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 9 including pair of support brackets each separated from the other and independently adjustably mounted on the post member; the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 20

Art Unit: 3679

including the winch corner having a plurality of brackets each attached on one of the mounting portions of the main support frame and adapted to have a portion of the fence wire secured about a selected one of the brackets; the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 26 including a pair of support brackets each separate from the other and independently adjustably mounted on the post member between opposite ends thereof; the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 36 including a plurality of at least three spaced apart leg members each pivotally mounted to one of the three spaced apart leg members each pivotally mounted to one of the mounting portions of the main support frame such that the leg members can be setup in a tripod configuration.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hult U.S. Patent 475,867 and Frost U.S. Patent 406,642 show similar inventions.

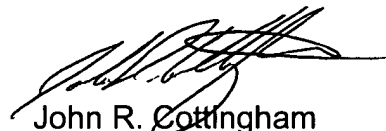
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (703) 306-3439. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

Art Unit: 3679

305-3597 for regular communications and (703) 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-216.



John R. Cottingham  
Examiner  
Art Unit 3679

jrc  
September 18, 2002